86 Ill. 385 Field. Post. Oct 29. 1880

12-278

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~309~~. 57

ALEXANDER BUCHANAN, PLAINTIFF IN ERROR,

vs.

THE CITY OF LITCHFIELD, ILLINOIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1877.

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Aug. 22. 1888. Reporter

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Buchanan

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## No. 309

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge of said court, and the Hon. Samuel H. Treat, district judge of said district, associate judge of said court, on Wednesday, the 7th day of March, at the January term of said court, in the year of our Lord eighteen hundred and seventy-seven, and of our Independence the one hundred and first year.

J. A. JONES, *Clerk*.

ALEXANDER BUCHANAN } *vs.* CITY OF LITCHFIELD. } In assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Alexander Buchanan, a citizen of the State of Massachusetts, puts in his place Messrs. John M. and John Mayo Palmer, his attorneys, against The City of Litchfield, a municipal corporation organized under the laws of the State of Illinois, and a resident of said southern
2 district of Illinois, defendant, which puts in its place Messrs. Hay, Greene, and Littler, its attorneys, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 25 day of November, in the year of our Lord eighteen hundred and seventy-six, came said plaintiff, by his said attorneys, and filed in the office of the clerk of said court his bond for costs and declaration in said entitled cause, which said bond for costs and declaration are in the words and figures following, to wit:

*Bond for costs.*

Circuit court United States of America, southern district of Illinois, ss:

January term, A. D. 1877.

ALEXANDER BUCHANAN } *vs.* THE CITY OF LITCHFIELD. } In assumpsit.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all cost
3 which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this twenty-seventh day of November, 1876.

JNO. M. AND JNO. MAYO PALMER.

(Endorsed:) Filed November 28th, A. D. 1876. J. A. Jones, clerk.

REC. 309—1

*Declaration.*

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

In the United States circuit for said district of January term, A. D. 1877.

Alexander Buchanan, who is a citizen of the State of Massachusetts, complains of the City of Litchfield, a municipal corporation, organized under the laws of the State of Illinois, a citizen of the said State of Illinois, in an action of assumpsit.

For that, whereas, the said defendant heretofore, to wit, on the
4 first day of January, A. D. 1874, at, to wit, the district aforesaid, made its certain one hundred instruments in writing, commonly called coupons or interest notes, wherein and whereby the said defendants in and by each of the said coupons or interest-notes promised to pay to the bearer thereof, at the Nassau Bank, in the city of New York, the sum of twenty-five dollars on the first day of July, A. D. 1876, and then and there delivered the same to one George William Ballou, and the said George William Ballou after the making by the said defendant of the said interest notes or coupons, and before the maturity thereof, on, to wit, the day and year aforesaid, at &c., aforesaid, duly assigned and delivered the said one hundred coupons or interest-notes and each of them to the plaintiff, who thereby then and there became and was and still is the lawful bearer thereof and entitled to demand and receive the payment of the said several sums of money in each of the said coupons or interest notes specified whereof the defendant on, &c.,
5 at, &c., had notice; And by reason of which promises the said defendant became liable to pay to the plaintiff the several sums of money in each of the said coupons or interest-notes specified, according to the tenor and effect of the said notes or coupons, and being so liable, the said defendant on, &c., at, &c., aforesaid, promised the plaintiff to pay him the said sums of money in the said coupons specified according to their tenor and effect;

And whereas also the said defendant on the day and year aforesaid, at, &c., aforesaid, was indebted to the plaintiff in the sum of two thousand dollars, for so much money by the said plaintiff before that time lent and advanced to the said defendant by the said plaintiff at the request of the defendant;

And also in another like sum of money for so much other money by the said defendant had and received to and for the use of the plaintiff;

And also in another like sum of money for lawful interest be-
6 fore that time due, owing and payable by the said defendant to the said plaintiff upon certain sums of money by the said plaintiff before that time lent and advanced to and for the said defendant at its request and upon other sums of money before that time had and received by the said defendant to the use of the plaintiff;

And being so indebted, the said defendant in consideration thereof, on the day and year aforesaid, at, &c., aforesaid, promised the said plaintiff to pay him the sum of money in this count mentioned when thereunto requested—

Yet the said defendant, though often requested, hath not paid the plaintiff the aforesaid several sums of money or either of them, but neglect and refuses so to do, to the damage of the plaintiff of five thousand dollars, and therefor he sues, &c.

JOHN M. AND JNO. MAYO PALMER.
*Atty's for Plff.*

7 *Copy of instrument sued on.*

(25) LITCHFIELD WATER BOND. (25)

The city of Litchfield, Illinois, will pay to bearer, at the Nassau Bank, in the city of New York, twenty five dollars, being six months' interest on bond No. 1, due July 1st, 1876.

W. S. PALMER,
*Mayor.*

B. S. HOOD,
*City Clerk.*

(On the face:) 5.

One hundred of the coupons aforesaid will be introduced in evidence of like tenor of the foregoing, numbered from one to one hundred, both inclusive, differing only in the number.

*The city of Litchfield to Alexander Buchanan, Dr.*

| | |
|---|---|
| To money lent and advanced | $5,000 |
| To money had and received | 5,000 |
| To interest upon money loaned, &c | 5,000 |

(Endorsed:) Filed November 28th, 1876. J. A. Jones, clerk.

8 And afterwards, to wit, on the said 28th day of November, in the year aforesaid, there was issued out of the clerk of said court a summons in said cause, which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

*Summons.*

Circuit court of the United States of America, southern district of Illinois, ss.

The United States of America, to the marshal of the southern district of Illinois, greeting:

We command you to summon The City of Litchfield, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto Alexander
9 Buchanan, of a plea of trespass on the case upon promises to his damage, as he alleges, of five thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first year.

[L. S.] J. A. JONES, *Clerk.*

I hereby appoint I. R. Blockwell my special deputy to execute this writ.

December 14th, '76.

E. R. ROE,
*U. S. Mar.*

Executed this writ on the 15 day of December, 1876, by delivering a true copy thereof to David Davis, mayor of the city of Litchfield.

E. R. ROE, *U. S. Mar.*
By I. R. BLOCKWELL,
*Special Deputy.*

(Endorsed:) Filed December 29, A. D. 1876. J. A. Jones, clerk.

10 And afterwards, to wit, on Monday, the 8th day of January, at the January term of said court, in the year of our Lord eighteen hundred and seventy-seven, the following proceedings were had in said court in said cause and entered of record, to wit:

*Rule to plead.*

ALEXANDER BUCHANAN
*vs.*
CITY OF LITCHFIELD. } Assumpsit.

On motion of plaintiff, by Messrs. John M. and John Mayo Palmer, his attorneys, the defendant having been regularly served with process, is ruled to plead herein by Monday, the 15th day of January inst.

And afterwards, to wit, on the 12th day of January, in the year aforesaid, came said defendant by its said attorneys, and filed in said clerk's office its plea in said cause, which said plea is in the words and figures following, to wit:

*Plea.*

11 In the circuit court of the United States for the southern district of Illinois, to the January term, A. D. 1877.

THE CITY OF LITCHFIELD
*ats.*
ALEXANDER BUCHANAN. } Assumpsit.

And the defendant, by McWilliams, and Hay, Green and Littler, its attorneys, comes and defends the wrong and injury when, &c., and says that it did not undertake and promise in manner and form as the plaintiff hath thereof in his declaration complained against it, and of this the defendant puts itself upon the country.

ROBERT McWILLIAMS AND
HAY, GREEN AND LITTLER,
*Attorneys for Defendant.*

(Endorsed:) Filed January 12th, 1877. J. A. Jones, clerk.

12 And afterwards, to wit, on the 24th day of February, at the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

*Cause set for hearing.*

ALEXANDER BUCHANAN
*v.*
CITY OF LITCHFIELD. } Assumpsit.

By consent of parties, by their attorneys, this cause is set for hearing on the 1st day of March next.

And afterwards, to wit, on Wednesday, the 7th day of March, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

*Judgment.*

ALEXANDER BUCHANAN
*v.*
CITY OF LITCHFIELD. } Assumpsit.

This day comes as well the plaintiff, by Mess. John M. and John Mayo Palmer, his attorneys, as the defendant, by Messrs. Hay,
13 Green and Littler, its attorneys, and the issue joined by consent is tried by the court, a jury being waived; and the court, having heard the evidence and argument of counsel, finds the issue for the defendant.

It is therefore ordered and adjudged that the defendant go hence without day and recover of the plaintiff the costs and charges by it about its defence in this behalf expended, amounting to the sum of dollars and cents, and that execution issue therefor.

And afterwards, to wit, on the 7th day of March, in the year aforesaid, there was filed in said clerk's office a certificate of division in said cause, which said certificate of division is in the words and figures as follows, to wit.

*Certificate of division.*

In the circuit court of the United States, southern district of Illi-
14 nois, January term, A. D. 1877.

Present, the Hon. Thomas Drummond, circuit judge; the Hon. Samuel H. Treat, district judge.

ALEXANDER BUCHANAN
*vs.*
THE CITY OF LITCHFIELD. } In assumpsit.

On the trial of the above cause the above-named judges without the intervention of a jury, by the consent of the parties, the plaintiff to maintain the issues on his part offered in evidence one hundred (100) c'upons of which it was admitted he was the bona fide holder for value, issued by the defendant, The City of Litchfield, under the following circumstances:

On the 15th day of April, 1873, the legislature of the State of Illinois passed an act entitled "An act authorizing cities, incorporated towns and villages to construct and maintain water works," by the first section of which act it is provided, that all cities, incorporated towns

and villages in this State be, and are hereby, authorized and shall have power to provide for a supply of water for the purpose of fire protection and for the use of the inhabitants of such cities, incorporated towns and villages, by the erection, construction, and maintaining of a system of water works. * * *

And by the second section of the same act it was provided that such cities, incorporated towns and villages may borrow money and levy and collect a general tax in the same manner as other municipal taxes may be levied and collected for the erection, construction, and maintaining of such water works and appropriate money for the same.

On the 4th day of December, 1873, the city council, the legislative authority of the City of Litchfield, adopted an ordinance in the words following:

ORDINANCE No. 184.

An ordinance to provide for the issuing of bonds for the construction of the Litchfield water works.

Be it ordained by the city council of the city of Litchfield:

SEC. 1. That in accordance with the power conferred by section second of an act of the general assembly of the State of Illinois entitled an act authorizing cities, incorporated towns and villages to construct and maintain water works, approved April 15th, 1873, the mayor and city clerk are hereby authorized and instructed to issue not exceeding fifty thousand dollars in Litchfield water bonds, which bonds shall be used for borrowing money for the erection, constructing, and maintaining of waterworks for the use of the people of said city of Litchfield.

SEC. 2. That the said Litchfield water bonds shall be of the denomination of five hundred dollars each, shall be dated January 1st, 1874, and shall become due twenty years after said date, but may be redeemed at par at any time after the year 1878, notice being given at the Nassau Bank, in the city of New York, six months in advance of the intention so to redeem, and said bonds shall bear interest at the rate of ten per centum per annum, payable semi annually at the said Nassau Bank in the city of New York.

Which ordinance was approved by the mayor of the city as required by the charter.

After the adoption of the ordinance the mayor and city clerk made one hundred bonds of the denomination of $500 dollars each, as authorized by the ordinance, which are as follows, differing in the numbering from 1 to 100 inclusive.

No. LITCHFIELD WATER BOND. 500.00

*City of Litchfield, State of Ills.*

The City of Litchfield, in the State of Illinois, for value received promised to pay to Geo. Wm. Ballou or bearer five hundred dollars, in current money of the United States, at the Nassau Bank in the city of New York, twenty years after date, with *in* interest thereon from the date hereof at the rate of ten per centum per annum, which interest shall be payable semi annually in current money of the United States on presentation at said bank of the coupons hereto annexed; provided, that the said

city of Litchfield shall have the right to pay off and redeem this bond at its par value at any time after the year A. D. 1878, first giving said bank six months' notice in writing of the intention to so redeem.

18 This bond is issued under authority of an act of the general assembly of the State of Illinois entitled "An act authorizing cities, incorporated towns and villages to construct and maintain water works," approved Apr. 15th, 1873, and in pursuance of an ordinance of the said City of Litchfield numbered 184 and entitled "An ordinance to provide for the issuing of bonds for the construction of the Litchfield water works," approved December 4th, 1873.

In testimony whereof the mayor of said city has hereunto set his hand and caused the corporate seal to be affixed, and the clerk of said city to countersign the same this first day of January, A. D. 1874.

W. S. PALMER, *Mayor.*

B. S. HOOD,
*City Clerk.*

C'upons for the semi-annual interest were attached to the said bonds, and the whole number, amounting to fifty thousand dollars, were sold by the city for the purposes for which they were authorized. The plaintiff's c'upons, one hundred in number, for twenty-five dollars each, fall-

19 ing due July 1st, 1876, were for interest on said bonds.

The defendant then proved against the objection of the plaintiff, who insisted that such evidence was not admissible against him as the bona fide holder of such c'upons, that the city of Litchfield is incorporated under a special law which defines its boundaries; that there was no assessment made of the taxable property within said city for the year 1873, separately, but that the city is within the limits of two municipal townships organized under the township organization laws of the State, one called North Litchfield and the other South Litchfield, each six miles square, and that the taxable property in the city was assessed for State and county taxes in the township in which it was situated and to which it belonged; that the property of the city as assessed for State and county taxes for the year 1873 was $1,400,000, which valuation was ascertained by the following method:

The assessors of North and South Litchfield returned to the

20 clerk of the county court the lists and value of the property assessed for taxation for the year 1873, in said townships respectively, which lists contained a description of all the lands, lots and other real estate in said township, with the proper valuation opposite each tract or lot. With these lists and the plat of the city before him the clerk was able to ascertain the description and value of all the real estate in the city, and by footing the value of the several lands and lots found within the city limits the aggregate value of all the real estate of the city was ascertained for the year 1873.

By another special law the city of Litchfield is made one school district, called the Litchfield school district. And it is a part of the legal duty of the township to note opposite the name of each owner of personal property assessed for taxation the school district in which he resides. That the assessor of North and South Litchfield for the year 1873 noted opposite the names of the owners of personal property in their township residing within the city limits that they resided in Litchfield school district, and the assessed value of the personal property of the city of Litchfield was ascertained by computing the value of

21 all the personal property assessed for taxation in the school district.

That railroad property and property of corporations was assessed by the State Board of Equalization, and the whole value of these species of property lying in Montgomery County (in which the city of Litchfield is situated) was certified by the auditor to the county clerk, and the proportions taxable in Litchfield was ascertained by the clerk.

That the assessment thus made by the town assessor of the towns of North and South Litchfield, was the only assessment made or authorized by law to be made, of the property situated in the city of Litchfield for State and county taxes for the year 1873, and which assessment for the purposes aforesaid was the last assessment for State and county taxes previous to the issuing and making of said bonds. That by compiling the assessments thus made the exact amount of the value of taxable property in said city of Litchfield for the year 1873, as assessed for State and county taxes, should be and is ascertained to be the said sum of $1,400,000.

And it was proved that the debt of the city of Litchfield on and before the 1st day of January, 1874, exclusive of the water-bonds, was $70,000.

22 And the defendant then insisted that the said bonds were in excess of five per centum upon the valuation of the taxable property in the said city as ascertained by the assessment of State and county taxes for the year 1873—and therefore void under the provisions of the 12th section of the 9th article of the constitution of the State of Illinois, which is in these words.

"SECTION 12. No county, city, town, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount including existing indebt'ness in the aggregate exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebt'ness."

Upon the trial aforesaid the following questions arose and occurred, to wit:

First. Whether the said 12th section of the 9th article of the constitution of the State of Illinois, by its own force and terms without appropriate legislation, limited or affected the otherwise lawful power of the city of Litchfield to issue the bonds and c'upons and sell the same

23 to raise money for the construction of water works according to the provisions of the act of April 15th, 1873. And the ordinance of the city of Lithfield No. 184, in relation thereto, so as to render said bonds and c'upons void as being in excess of five per centum, including existing indeb'tness on the value of taxable property in said city as ascertained by the last assessment for State and county taxes preceding the issue of such bonds.

Second. Whether the facts offered in evidence for the purpose of showing the value of taxable property in the city of Litchfield for the year 1873 are competant and sufficient to establish the value of taxable property therein, to be ascertained by the last assessment thereof, for State and county taxes previous to the issue of such bonds.

Third. Whether the said facts tending to prove that the said bonds, including the indebt'ness of said city, exceed five per centum on the value of the taxable property of said city at the time they were issued, as ascertained in manner before stated, are admissible or competant as evidence in this case, impair the rights of the plaintiff as the bona fide holder of the c'upons sued on.

24 And the opinion of the said judges being opposed upon the points and questions before stated, they hereby certify the facts so found and admitted on the trial and the said several questions upon

which their opinions were opposed according to the statute in such case made and provided.

T. DRUMMOND.
S. H. TREAT.

(Endorsed:) Filed March 7th, 1877. J. A. Jones, clerk.

And afterwards, to wit, on the 14th day of April, in the year aforesaid, came said plaintiff, by his attorneys, and filed in said clerk's office his bond in said cause, which said bond is in the words and figures following, to wit:

*Bond.*

Know all men by these presents that we, Geo. M. Ballou, of Boston, do hereby constitute and appoint John M. and John Mayo Palmer, of Springfield, Illinois, our true and lawful attornies, for us and in our name and stead to sign a bond of ($500) five hundred dollars on an ap-
25 peal of the case of Alexander Buchanan vs. The city of Litchfield, Illinois, hereby granting unto our said attornies full power and authority to act in and concerning the premises as fully and effectually as we might do if personally present, and also power at our discretion to constitute and appoint from time to time as occasion may require one or more sub-agents or attorneys under same and their authority at pleasure to revok'.

In witness whereof we hereto set *set* hands and seal this 9th day of April, in the year one thousand eight hundred and seventy-seven.

GEO. WM. BALLOU & CO. [L. S.]

Signed and sealed in presence of—
GEO. A. DOANE, Jr.

Supreme Court of the United States.

ALEXANDER BUCHANAN
*vs.*
THE CITY OF LITCHFIELD. } In assumpsit.

Know all men by these presents that we, Geo. M. Ballou & Co
26 as principal and John M. and John Mayo Palmer as securities, all held and firmly bound unto the city of Litchfield, in the sum of five hundred dollars, to the payment of which we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 14th day of April, A. D. 1877.

Now the condition of this obligation is such that if the above-named Alexander Buchanan shall pay or cause to be paid all costs incurred in the Supreme Court of the United States in the further prosecution the above-entitled suit upon the certificate of division as aforesaid, and the writ of error sued out to be filed and returnable in the said Supreme Court, on or before the second Monday in October next, then this obligation to be void; otherwise to remain in full force and virtue.

GEO. WM. BALLOU & CO. [SEAL.]
By JOHN M. AND JOHN MAYO PALMER.
*Attorneys in Fact.*
JOHN M. AND JOHN MAYO PALMER. [SEAL.]

(Endorsed:) Filed April 14th, 1877. J. A. Jones, clerk.

27 UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

I, John A. Jones, clerk of the circuit court of the United States in and for said southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings had thereon in a certain cause lately pending in said court, wherein Alexander Buchanan is plaintiff and The City of Litchfield is defendant, as fully and completely as the same appear on file and of record in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Springfield, in said district, this 24th day of September, in the year of our Lord eighteen hundred and seventy-seven, and of our Independence the one hundred and second year.

SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 309. Alexander Buchanan, pl'ff in error, vs. The City of Litchfield, Illinois. (Certificate of division.) S. Illinois C. C. U. S. Filed 15th October, 1877.

IN THE

# SUPREME COURT OF THE UNITED STATES.

NO. 309.

OCTOBER TERM, A. D. 1879.

ALEXANDER BUCHANAN, *Plaintiff in Error,*

*vs.*

THE CITY OF LITCHFIELD, *Defendant in Error.*

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.*

## BRIEF OF JOHN M. PALMER,

FOR PLAINTIFF IN ERROR.

SPRINGFIELD, ILL.:
STATE REGISTER PRINTING HOUSE.
1879.

IN THE

# SUPREME COURT OF UNITED STATES.

NO. 309.

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OCTOBER TERM, A. D. 1879.

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ALEXANDER BUCHANAN, *Plaintiff in Error*,

*vs.*

THE CITY OF LITCHFIELD, *Defendant in Error*.

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*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.*

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## BRIEF OF JOHN M. PALMER FOR PLAINTIFF IN ERROR.

The record in this case scarcely admits of abbreviation. The plaintiff in error proved on the trial—

1. The Act of the General Assembly of the State of Illinois entitled "An act authorizing cities, incorporated towns and villages to construct and maintain water works," approved April 15, 1873, which provides that "all cities, incorporated towns and villages in this State be and are hereby authorized and shall have

power to provide for a supply of water for the purposes of fire protection and for the use of the inhabitants of such cities, incorporated towns and villages by the erection, construction and maintaining a system of water works."

The second section of the act provides that "such cities, incorporated towns and villages may borrow money and collect a general tax in the same manner as other municipal taxes may be levied and collected for the erection, construction and maintaining such water works, and appropriate money for the same."

On the 4th day of December, 1873, in the City Council of the City of Litchfield, the defendant in error adopted the following ordinance:

"ORDINANCE NO. 184.

"AN ORDINANCE TO PROVIDE FOR THE ISSUING OF BONDS FOR THE CONSTRUCTION OF THE LITCHFIELD WATER WORKS.

"*Be it ordained by the City Council of the City of Litchfield:*

"SECTION 1. That in accordance with the power conferred by section second of an act of the General Assembly of the State of Illinois, entitled 'An act authorizing, cities, incorporated towns and villages to construct and maintain water works,' approved April 15, 1873, the Mayor and City Clerk are hereby authorized and instructed to issue not exceeding fifty thousand dollars in Litchfield water bonds, which bonds shall be used for borrowing money for the erection, constructing and maintaining of water works for the use of the people of said City of Litchfield.

"SEC. 2. That the said Litchfield water bonds shall be of the denomination of five hundred dollars each, shall be dated Jan-

uary 1st, 1874, and shall become due twenty years after said date, but may be redeemed at par at any time after the year 1878, notice being given at the Nassau Bank in the City of New York six months in advance of the intention so to redeem, and said bonds shall bear interest at the rate of ten per centum per annum, payable semi-annually, at the said Nassau Bank in the city of New York."

The ordinance was approved by the Mayor, as required by the charter of the city.

After the adoption of the ordinance, the Mayor and City Clerk in pursuance of its directions, made one hundred bonds of the denomination of five hundred dollars each, which, differing in number (from 1 to 100, inclusive), are as follows:

"No. 1. LITCHFIELD WATER BOND. 500

"*City of Litchfield, State of Illinois.*

"The City of Litchfield, in the State of Illinois, for value received, promise to pay to George Wm. Ballou or bearer five hundred dollars in current money of the United States, at the Nassau Bank in the City of New York, twenty years after date, with interest thereon, from the date hereof, at the rate of ten per centum per annum, which interest shall be payable semi-annually in current money of the United States, on presentation at said bank of the coupons hereto annexed; provided, that the said City of Litchfield shall have the right to pay off and redeem this bond at its par value at any time after the year A. D. 1878, first giving said bank six months' notice in writing of the intention to so redeem.

"This bond is issued under authority of An act of the General

Assembly of the State of Illinois, entitled 'An act authorizing cities, incorporated towns and villages to construct and maintain water works,' approved Apr. 15, 1873; and in pursuance of an ordinance of the said city of Litchfield, numbered 184, and entiled 'An ordinance to provide for the issuing of bonds for the construction of the Litchfield water works,' approved December 4th, 1873.

"In testimony whereof the Mayor of said city has hereunto set his hand and caused the corporate seal to be affixed, and the Clerk of said city to countersign the same, this 1st day of January, A. D. 1874.

W. S. PALMER, Mayor.

B. S. HOOD, City Clerk.

Coupons for the semi-annual interest were attached to the bonds, and the whole of the bonds, amounting to fifty thousand dollars, were sold by the city, for the purposes for which their issue was authorized.

The plaintiff's coupons, one hundred in number, for twenty-five dollars each, falling due July 1st, 1876, were for interest on said bonds.

It was admitted on the trial that the plaintiff in error was a *bona fide* holder of the coupons sued on for value.

The defendant in error proved—against the objection of the plaintiff, who insisted that such evidense was not admissable against him, the *bona fide* holder of the coupons—that the City of Litchfield is incorporated under a special law, which defines its boundaries, and that there was no assessment made of the taxable property within said city for the year 1873, separately, but that

the city is within the limits of two municipal townships organized under the township organization law of the State of Illinois, one of them called North Litchfield and the other South Litchfield, each of them six miles square, and that the taxable property of the city was assessed in 1873 for State and county taxes in the townships in which it is situated and to which it belonged, that the property of the city as assessed for State and county taxes for the year 1873 was $1,400,000, which value was ascertained in the following manner: The assessors of the townships of North and South Litchfield returned to the Clerk of the County Court the lists and valuation of the property assessed for taxation for the year 1873 in said townships, respectively, which lists contained a description of all the lands, lots and other real estate in said townships, with the proper valuation opposite each tract or lot.

With these lists and a plat of the City of Litchfield before him, the County Clerk was able to ascertain the description and assessed value of all the real estate within the city limits, and by footing the value of the several lands and lots, found in that way to be within the city limits, the aggregate assessed value of all the real estate in the city was ascertained for the year 1873.

By another special law the City of Litchfield is made one School District, called "Litchfield School District," and it is made the legal duty of the township assessors to note opposite the name of each owner of personal property assessed for taxation, the school district in which he or she resides. The assessors of North and South Litchfield townships, for the year 1873, noted opposite the names of the owners of personal property within their townships, residing within the City of Litchfield, that they resided in "Litch-

field School District," and the aggregate assessed value of all the personal property of the City of Litchfield was ascertained by computing the assessed value of all the personal property assessed for taxation in the "Litchfield School District." The railroad property and the property of corporations was assessed by the State Board of Equalization, and the whole value of those species of property in Montgomery county, in which the City of Litchfield is situated, was certified by the State Auditor to the County Clerk, and the proportion taxable in Litchfield was ascertained by the County Clerk.

The assessments made by the assessors of the townships of North and South Litchfield, and the County Clerk of Montgomery county, were the only assessments made or authorized by law to be made of the property situated in the City of Litchfield for State and County taxes for the year 1873, and which assessment was the last assessment for State and County taxes previous to the making and issuing of said bonds.

That by compiling the assessments thus made, the exact amount of the value of the taxable property in said City of Litchfield, for the year 1873, as assessed for State and County taxes, was ascertained to be $1,400,000.

It was also proved that the debt of the City of Litchfield on and before the 1st day of January, 1874, exclusive of the water bonds, was $70,000.

After the introduction of the evidence of the foregoing facts, the defendant in error insisted that the amount of the water bonds was in excess of the five per centum upon the valuation of the

taxable property in said city, as ascertained by the assessment for State and County taxes for the year 1873, and that they were void under the provisions of the 12th Section of the 9th Article of the Constitution of Illinois, which is in the following words :

"Section 12.—No county, city, town, township, school district, or other municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and County taxes previous to incurring such indebtedness."

Upon the trial the following questions arose and occurred : "First. Whether the said 12th Section of the 9th Article of the Constitution of the State of Illinois, by its own force and without appropriate legislation limited or affected the otherwise lawful power of the City of Litchfield to issue the bonds and coupons and sell the same to raise money for the construction of water works, according to the provisions of the Act of April 15, 1873, and the Ordinance of the City of Litchfield, No. 184, in relation thereto, so as to render said bonds and coupons void as being in excess of five per centum, including existing indebtedness on the value of the taxable property in said city, as ascertained by the last assessment thereof for State and County taxes preceding the issue of such bonds."

"Second. Whether the facts offered in evidence for the purpose of showing the value of the taxable property in the City of Litchfield, for the year 1873, are competent and sufficient to establish the value of the taxable property therein, to be ascertained by

the last assessment thereof for State and County taxes previous to the issue of such bonds."

"Third. Whether the said facts tending to prove that the said bonds, including the (existing) indebtedness of said city, exceeds five per centum on the value of the taxable property of said city at the time they were issued, as ascertained in the manner before stated, are admissible or competent as evidence in this case to impair the rights of the plaintiff as the *bona fide* holder of the coupons sued on."

Judgment was rendered in the Circuit Court against the plaintiff, and he brings the record here according to the statute—the judges of the Court below being opposed in opinion upon the questions before stated.

The argument for the plaintiff in error will follow the arrangement of the points as stated in the certificate of the judges.

First Point—It is not intended to question the authority of the State of Illinois to control or limit the power of its municipal corporation to incur indebtedness, nor will it be denied that the 12th Section of the 9th Article of the Constitution of the State sufficiently indicates the purpose of the framers of that instrument, that the power of municipal corporations to contract debts should be limited to an amount not exceeding five per centum of the value of the property subject to taxation by their authority.

The question is, however, whether the Section of the Constitution referred to operates by its own vigor, in all cases, to impose the limitation designed. The effect of the Section is to be

determined from a consideration of its language and the nature of the subject to which it relates.

The language of the Section of the Constitution under consideration is that "no County, City, etc., be *allowed to become indebted, etc.* Such language seems to be addressed to the legislature and to be only intended to prescribe its duties in respect to the creation of municipal corporations or in adjusting their powers.

But even if the language of the Constitution is to be regarded as absolutely limiting the powers of municipal corporations, it still contemplates legislation to provide means for determining the exact amount of the existing indebtedness of such corporations and the amount of the assessment or valuation of the property therein.

It does not appear in the record that any legal method of ascertaining the indebtedness of the city existed, and it is certain that there has never been an assessment of the taxable property of the city to which parties interested could resort for official or authentic information.

In the case of *Law et al. vs. the People ex rel.*, 87 Ills., Reps. 385, the Supreme Court of the State of Illinois decide in general terms that the provision of the constitution under consideration is self-executing; but the facts of that case illustrate and enforce our view of the proper interpretation of the section in its application to the facts of this case.

For anything that appears in the case in 87 Ills., all the facts necessary to be known in order to determine the extent of the present authority of the city of Chicago to contract debts were of

record and accessible to persons interested. If so, legislation would be entirely unnecessary for the protection of the city or of the purchasers of its securities.

But in this case there was no assessment of the property in the City of Litchfield for taxation for 1873, specifically, and no means had been provided by law for ascertaining such valuation. The lands and lots in the city were described in the assessment lists as property in certain municipal townships, and the personalty as in a certain school district. To ascertain the location of the real property, maps were necessary, and none such were provided or contemplated by law; to ascertain the personal property and its value, an examination of a law creating a school district was necessary—a law of which persons dealing with the city could have no notice.

The Supreme Court recognize the principles upon which our distinction depends, by saying, in the opinion referred to, "the means of acquiring information full and complete were at hand and entirely accessible to the lender before and at the time of loaning his money, and he should have used them to protect his interests," p. 394. "The means of acquiring information," to which the Court refers, were in that case such as were provided by law, and hence it was well said any ordinary business man could have protected himself by resorting to them.

The provision of the constitution may therefore be well held to be self-executing in a case like that before the Supreme Court, but for the reasons suggested cannot be so held in a case, the facts of which are like the present.

Second Point—The evidence in the case shows that the assessments of property upon which the defendants below relied, were not assessments of the property in the municipality issuing the bonds but in two municipal townships which include the city. The laws of the State provide no means for ascertaining the valuation of the taxable property therein. The means adopted for that purpose require the use of a map of the city and of the two townships, for which the law makes no provision, and a further resort to the law creating a school district. It is not to be supposed that strangers dealing in the securities of the city are so familiar with the mere extra legal means for determining such facts that they can be charged with a knowledge of the amount of the existing indebtedness of the city or of the value of the taxable property therein, which cannot be ascertained by reference to any assessment made under authority of law.

We think the test of the admissibility of the evidence offered by the defendant in error is, whether the facts offered are such as a *bona fide* holder of the bonds was bound to know before acquiring them. 1. Was such holder bound to know the actual amount of the indebtedness of the City of Litchfield on the 1st day of January, 1874. 2. Was he bound to know all that could be learned of the value of the taxable property of the city, by examining the assessment lists of North and South Litchfield and by the use of a map of the city. 3. Was he bound to know that the City of Litchfield was a separate school district, with boundaries coincident with the city, and all the other extraneous facts relied upon by the defendant in error.

It is only admissible to prove such facts as the holders of the

paper of the city were bound to ascertain, and to employ such means of proof as were known to and fairly accessible to them.

Third Point—An authority to issue bonds for the purpose of constructing and maintaining water works was conferred upon the City of Litchfield with other cities of the State by the Act of April 15, 1873. In any view of the case it can only be said that the power conferred could not be exercised by the city while its existing indebtedness exceeded five per centum of the value of the taxable property in the city, to be ascertained by the last assessment for State and County taxes.

The actual amount of the existing indebtedness of the city on the 1st of January, 1874, and the valuation of the taxable property in the city for the year 1873, were facts, and were within the peculiar knowledge of the Mayor and Council, the executive and legislative authority of the city, and the actual state of those facts were by the principles of justice and of law, referred to the Council in the first instance. By the Ordinance No. 184, referred to in the record, the Council declared that the facts existed to warrant the exercise of the power conferred by the Act, to issue the bonds, and the Mayor and Clerk acting under the express authority of the Ordinance, issued the bonds and recited in them that they were issued by them under the authority of the Act of April 15, 1873, and the Ordinance of the City, No. 184.

The case is then clearly within the principle settled in *Kennicott vs. The Supervisors*, 16 Wall. 464.

In that which may be considered a leading case on this subject, the Court said: "If an election or other fact is required to

authorize the issue of the bonds of a municipal corporation, and if the result of that election or the existence of that fact is by law to be ascertained and declared by any judge, officer or tribunal, and that judge, officer or tribunal on behalf of the corporation executes or issues the bonds, with a recital that the election has been held or that the fact exists or has taken place, this will be sufficient evidence of the fact to all *bona fide* holders of the bonds."

The cases referred to by the Court in Kennicott's case afford various illustrations of the application of the rule formulated.

In *Knox County vs. Aspinwall*, 21 How. 539, it is said, "Where the statute of a State, provided that the board of commissioners of a county should have power to subscribe for railroad stock and issue bonds therefor, in case a majority of the voters of the county should so determine after certain notice should be given of the time and place of the election, and the board subscribed for the stock and issued the bonds, purporting to act in compliance with the statute, it is too late to call in question the existence or regularity of the notice, in a suit against them by the holders of the coupons attached to the bonds who were innocent holders."

The cases of—

*Wood vs. Lawrence County*, 1 Black, 386.
*Mercer County vs. Hackett*, 1 Wall., 83.
*Grand Chute vs. Winegar*, 15 Wall., 356.

are to the same effect.

Two other cases decided in this Court—*The County of Moultrie vs. the Savings Bank* 92, U. S. Reports 631, and *Marcy vs. The Township of Oswego*, *idem.* 637—are still more to the purpose, and seem to us to be decisive.

In the first of these cases the power of the County of Moultrie to make subscription to the stock of a railroad company, which was conferred upon it by an Act of the Legislature, approved March 26, 1869, was taken away by the separate Article of the Constitution of the State, adopted on the 2nd day of July, 1870.

The bonds were actually issued after 25th of December, 1872, and the Court after discussing other questions in the case, said: "The findings of the Court are that the plaintiff below is a purchaser of the bonds for a valuable consideration, having purchased them before maturity, without any notice of a defence. They were executed by the president of the Board of Supervisors and the County Clerk. They recite that they are issued by the County of Moultrie in pursuance of the subscription of the sum of $80,000 to the capital stock of the Decatur, Sullivan and Mattoon railroad company, made by the Board of Supervisors of said County of Moultrie in December, A. D. 1869, in conformity to the provisions of an Act of the General Assembly of the State of Illinois, approved March 26th, A. D. 1869."

And then it is said: "How then can the County be permitted to set up against a *bona fide* holder of the bonds that the authority to make a subscription, with all its legitimate consequences, had expired before the subscription was made, in the face of the recital in the County records?"

"*Whether it had expired was a matter of fact, not of law, and it was peculiarly, if not exclusively, within the knowledge of the Board of Supervisors.*"

In the Oswego case it is said that it became a question

whether in a suit brought by a *bona fide* holder for value to recover the amount of some coupons, it could be shown as a defence to a recovery that at the time of voting and issuing the series of bonds the value of the taxable property of the township was not in amount sufficient to authorize the voting and issuing of the whole of the series, amounting to $100,000.

The recitals contained in the bonds were that they were executed and issued by virtue of, and in accordance with, an Act of the Legislature of the State of Kansas, entitled "An act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same," approved Feb. 25, 1870, and in pursuance of and in accordance with the vote of three-fifths of the legal voters of said township of Oswego, at a special election duly held on the 17th day of May, 1870.

The Court says that "in view of the facts and decisions heretofore made by this Court, the first question certified to us cannot be considered an open one. We have recently reviewed the subject in *Town of Coloma vs. Eaves*, *supra*, p. 484, and re-asserted what had been decided before, namely, that where legislative authority has been given to a municipality to subscribe for the stock of a railroad company and to issue municipal bonds in payment of the subscription on the happening of some precedent contingency of fact, and where it may be gathered from the legislative enactment that the officers or persons designated to execute the bonds were invested with power to decide whether the contingency had happened or whether the fact existed which was a necessary precedent to any subscription or issue of the bonds, their decision is final in a suit by the *bona fide* holder of the

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bonds against the municipality, and a recital in the bonds that the requirements of the legislative act have been complied with, is conclusive. And this is more emphatically true where the fact is one peculiarly within the knowledge of the persons to whom the power to issue the bonds has been conditionally granted."

One of the conditions upon which the power in that case was granted was that "the amount of the bonds voted by any township should not be above such a sum as would require a levy of more than one per cent. per annum upon the taxable property of such township to pay the yearly interest," which was in effect precisely as if the words of the Constitution of the State of Illinois had been used, that the bonds voted by any township shall not exceed, including existing indebtedness, five per centum upon the valuation of the taxable property therein, to be ascertained by the last assessment.

The Court, after specifying some of the powers expressly conferred upon the County Board by the act, says: "These provisions of the legislative act make it evident not only that the County Board was constituted the agent to execute the power granted, but that it was contemplated the Board should determine whether the facts existed, which, under the law, warranted the issue of the bonds. The Board was to order the election, if certain facts existed, and only then. It was required to act if fifty freeholders, who were voters of the township, petitioned for the election, if the petition set out the amount of stock proposed to be subscribed, *if that amount was not greater than the amount to which the township was limited by the act* * * * Of course the Board and it only was to decide whether these things precedent to the

right to order an election were actual facts. No other tribunal could make the determination, and the members of the board had peculiar means of knowledge beyond what any other persons could have. Moreover, these decisions were to be made before they acted, not after the election, and after the bonds were issued.

It is not necessary to quote from the opinion of the Court further, for it will be seen that the case is in principle absolutely conclusive of this.

The Act of April 15, 1873, in the broadest and most comprehensive terms, authorises all cities in the State to borrow money and issue bonds to raise money for constructing and maintaining water works, while nothing more can be claimed than that the Constitution prohibits cities indebted to an amount which exceeds five per centum of the value of the taxable property therein, from exercising any of the powers conferred. It was then, as the legislature had done nothing to give effect to the Constitution, but a question of fact whether in any particular case a city could avail itself of the authority created and conferred by the statute. The City Council and the Mayor of the City of Litchfield, who together possess all the legislative and executive powers of the municipality, before issuing the bonds decided that the existing facts—the amount of the existing indebtedness of the city and the valuation of the taxable property—were such as to warrant the exercise of the authority conferred by the Act, and they recited the authority in the bonds.

JOHN M. PALMER,

*Of Counsel for Plaintiff in Error.*

OFFICE SUPREME COURT U. S.
FILED
APR 14 1880
D. W. MIDDLETON, Clerk.

# SUPREME COURT OF THE UNITED STATES,

No. 309. OCTOBER TERM, 1879.

ALEXANDER BUCHANAN, PLAINTIFF IN ERROR,

v.

THE CITY OF LITCHFIELD, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR PLAINTIFF IN ERROR.

FRANK MORISON,
*of Counsel for Plaintiff in Error.*

# *In the Supreme Court of the United States,*

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR PLAINTIFF IN ERROR.

### STATEMENT OF THE CASE.

The city of Litchfield, Ill., the defendant in error, issued its negotiable bonds to the amount of fifty thousand dollars, dated January 1, 1874.

The bonds recited that they were issued under an act of the General Assembly of the State of Illinois, entitled "An act authorizing cities, incorporated towns and villages, to construct and maintain water-works," approved April 15, 1873; and in pursuance of an ordinance of said city of Litchfield, numbered 184, and entitled "An ordinance to provide for the issuing of bonds for the construction of the Litchfield water-works," approved December 4, 1873.

(*Vide* Record, pp. 6, 7.)

These bonds were sold by the city for the purposes for which they were authorized; and this suit was brought by he plaintiff in the Court below, upon one hundred $25

coupons of these bonds, of which he is a bona fide holder for value.

At the trial the defence relied upon was, —

That the issue of bonds was in conflict with the 12th section of the 9th article of the constitution of Illinois, which provides that no city "shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per cent on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness" (*vide* Record, p. 8); and defendant offered (against the objection of the plaintiff, who contended that it was not admissible against him as a bona fide holder of the coupons) evidence intended to show that at the time when the bonds were issued, the debt of the city of Litchfield, exclusive of these bonds, equalled five per cent of its assessed valuation.

(*Vide* Record, pp. 7, 8.)

Three questions arose at the trial, upon which the opinions of the judges were divided, and which are therefore certified to this Court, with the facts found and admitted.

These questions are on page 8 of the record, and are, —

"First. Whether the said 12th section of the 9th article of the constitution of the State of Illinois, by its own force and terms, without appropriate legislation, limited or affected the otherwise lawful power of the city of Litchfield to issue the bonds and coupons and sell the same to raise money for the construction of water-works according to the provisions of the act of April 15, 1873, and the ordinance of the city of Litchfield No. 184, in relation thereto, so as to render said bonds and coupons void as being in excess of five per centum, including existing indebtedness on the value of taxable property in said city as ascertained by the last

assessment for state and county taxes preceding the issue of such bonds.

"Second. Whether the facts offered in evidence for the purpose of showing the value of taxable property in the city of Litchfield for the year 1873 are competent and sufficient to establish the value of taxable property therein, to be ascertained by the last assessment thereof, for State and county taxes previous to the issue of such bonds.

"Third. Whether the said facts tending to prove that the said bonds, including the indebtedness of said city, exceed five per centum on the value of the taxable property of said city at the time they were issued, as ascertained in manner before stated, are admissible or competent as evidence in this case, to impair the rights of the plaintiff as the bona fide holder of the coupons sued on."

## ARGUMENT FOR THE PLAINTIFF IN ERROR.

### I.

The first question, in substance, then, goes to the point whether the constitutional clause mentioned, had the effect of so entirely *annihilating* the legal power of the city of Litchfield to issue bonds beyond five per cent of its assessed valuation, as to bring them within that class of cases decided by this Court where original want of power to issue bonds renders them void in the hands of any one; or whether the constitution, in providing that the limitation upon the city's power should take effect only under certain circumstances, did not thus make the question of power necessarily dependent upon the decision of the city authorities, whether those circumstances existed, they being the only persons to ascertain this fact; in which case the issue of the bonds by the city would be, as to bona fide holders of them, a final and binding decis-

ion that the circumstances did exist under which this power could be legally exercised.

It is a well-settled rule of this Court that nothing short of an absolute want of legislative power shall render municipal bonds, when once issued, void in the hands of a bona fide holder for value. Under this rule, bonds issued without proper formalities, bonds issued contrary to the most emphatic provisions of the laws authorizing them, bonds fraudulently issued, bonds stolen from the municipal authorities, and the proceeds of which never reached the treasuries of the municipalities issuing them, and bonds held invalid in the courts of the states where they have been issued, have all been held good here, and the promissors have been rigorously held to the payment of their commercial paper in the hands of a bona fide holder, without regard to any equities which would constitute a good defence against one aware of them.

*Knox* v. *Aspinwall*, 21 How. 544.
*Moran* v. *Miami County*, 2 Black, 732.
*Mercer Co.* v. *Hackett*, 1 Wall. 83.
*Mayor* v. *Muscatine*, 1 Wall. 384.
*Supervisors* v. *Schenk*, 5 Wall. 784.
Dillon, Municip. Corp., § 419.
*Daviess* v. *Huidekoper*, 98 U.S. 98.
*Co. of Schuyler* v. *Thomas*, 98 Wall. 169.
*Co. of Callaway* v. *Foster*, 93 U.S. 567.
*Co. of Scotland* v. *Thomas*, 94 U.S. 682.
*Co. of Warren* v. *Marcy*, 97 U.S. 96.
*Cromwell* v. *Co. of Sac*, 96 U.S. 51.
*Douglass Co.* v. *Bolles*, 94 U.S. 104.
*Com'rs of Johnson Co.* v. *January*, 94 U.S. 202.

In most, if not all, of these cases, the same defence of *want of power*, here relied on, has been set up, and it would

seem that what will be deemed a want of power in municipalities to issue bonds is pretty well settled by this time.

What is the want of power relied on as a defence in this case?

It is that the constitution of Illinois prohibits the issue, by municipalities of that state, of bonds beyond five per cent of the assessed valuation of their taxable property.

The question then is, does such a prohibition constitute such a want of power as to render these bonds void?

We submit that this Court has already decided in several cases, that it does not; and we refer to the cases of *Marcy* v. *The Township of Oswego*, 92 U.S. 637, and *Humbolt Township* v. *Long*, 92 U.S. 642, in support of our views.

In the first of these cases, the legislative act under which the bonds were issued, provided that the amount should not exceed what would require a levy of one per cent per annum to pay interest. The bonds there in suit were in excess of such an amount; but in the hands of a bona fide holder for value, they were held valid. The Court say, —

"It is to be observed that every pre-requisite fact to the execution and issue of the bonds was of a nature that required examination and decision. *The existence of sufficient taxable property to warrant the amount of the subscription and issue, was no more essential to the exercise of the authority conferred* upon the board of county commissioners than was the petition for the election, or the fact that fifty freeholders had signed," &c.

"*These are all extrinsic facts, bearing not so much upon the authority vested in the board to issue the bonds, as upon the question whether that authority should be exercised.*"

The only distinction between that case and the present one, is that the limitation there imposed upon the issue of

* also Wilson v Salamanca 99 U.S. 499

bonds was by statute, whereas here it is by constitutional provision.

This is a distinction without a difference. A constitutional limitation is in no wise more effective than a statute one: it only differs in requiring a different process for its alteration or repeal. The present case stands therefore just as if the law of April 15, 1873, authorizing these bonds, contained the provision which is in the constitution, and the doctrine of *Marcy* v. *The Township of Oswego*, applies.

The case of the *Town of Coloma* v. *Eaves*, 9 U.S. 484, decides that where by legislative enactment authority is given to a municipality to issue bonds only on some precedent condition, and where it may be gathered from the enactment that the officers of the municipality were to decide whether that condition had been complied with, their recital to that effect is conclusive in a suit on such bonds by a bona fide holder. In that case, no bonds were to be issued until the question of issuing them had been submitted to popular vote and a majority of the legal voters of the city had voted in favor of issuing. Mr. Justice STRONG says in his opinion that the Court concede that the authority to make the subscription (and consequently to issue the bonds) was *dependent* upon the vote, but asks by *whom* the result of the vote was to be ascertained. "The duty of ascertaining it was plainly intended to be vested *somewhere* and *once for all;* and the only persons spoken of who have any duties to perform respecting the election and action consequent upon it, are the town clerk and the supervisor or other executive officer of the city or town. It is a fair presumption therefore that the legislature *intended* that those officers, or one of them at least, should determine whether the requirements of the act prior to a subscription had been met."

The same reasoning is applicable to the present case.

Here we have a requirement to be met prior to the issue of the bonds, and the fact whether it has been met, is to be determined by the city or its proper officers.

In all the foregoing cases similar conditions existed, and in some of them the prohibitions against issuing bonds were as emphatic as those in the Illinois constitution; yet the Court decided that, sufficient power to issue the bonds having been given by law, restricting its exercise did not take it so entirely away as to render entirely void bonds issued in disregard of the restriction.

Before these decisions were made, this question of constitutional limitations was discussed by Judge DILLON in his "Law of Municipal Corporations" (vol. i. p. 206), and he says that in the then absence of any decision upon the subject, he is of the opinion, that bonds issued in excess of such limitations should he held good in the hands of bona fide holders for value, because of the practical difficulties in the way of purchasers of this class of securities ever ascertaining what the indebtedness of a municipality is at any given time; and also because, if the bonds are held void, the money originally paid for them could be recovered in an action for money had and received, which would merely have the effect of rendering the municipality liable beyond the constitutional limitation in a different way.

The fact is not overlooked, that since this case was certified from the lower court, the Illinois Supreme Court has decided bonds issued by the city of Chicago beyond the five per cent limit, to be absolutely void.

No argument in favor of the defendant can be properly based upon this decision, whatever may be its grounds, because this Court, in cases like this, involving questions of general commercial law, holds that state Court decisions

are not binding upon it, and that unless they suit the views of this Court, they will be disregarded.

Roberts v Bolles 101 US 127

*Talcott* v. *Pine Grove*. 19 Wall. 666.

*Alcott* v. *The Supervisors*, 16 Wall. 678.

Pease v Peck 18 How 595

And there is no decision of the Illinois Supreme Court upon this clause of the state constitution previous to the issue of these bonds, but there were the prior decisions of this Court above cited, upon substantially the same language used in the Illinois constitution as applied to municipal bonds.

It cannot then be deemed a local question of construction peculiar to the Illinois constitution, having been here already passed upon in its general application to municipal bonds, and as a question of general commercial law.

The before-cited case of the *Township of Pine Grove* v. *Talcott* seems to be peculiarly applicable here.

The question there was, whether municipal aid to railroads was a legitimate object of taxation. The Supreme Court of Wisconsin had held that it was not, and it declared the act of the legislature authorizing such aid, to be in conflict with the state constitution on that ground. It was contended that this Court was bound by the state Court decision, on the ground that the case involved a state constitutional question, but the Court said that it was a question of "general jurisprudence" which had been frequently decided by them, and they refused to change their well-settled views upon it merely because it happened to arise in a case involving the meaning of a state constitution.

Such is the case here. The construction placed upon the 12th section of the Illinois constitution by the Illinois Supreme Court, in the Springfield and Chicago cases, is not dependent upon locality. The words of the constitution are perfectly plain — as the Court say in the Springfield case —

"too plain to admit of but one construction," and they constitute an unequivocal prohibition, but one no more positive and plain than appears in the act of the legislature of Kansas, cited in the Oswego Township case before referred to. In holding that this clause of the constitution showed an intention to limit the issue of bonds by municipalities of the state beyond the five per cent limitation, the Supreme Court of Illinois may have been deciding a constitutional question; but when it permitted a municipality which had issued its negotiable bonds, having on their face what was in effect a formal statement under seal, that they were *not* beyond the constitutional limitation, after having received full value for such bonds, to defeat them by evidence that its formal statement was false; then we submit, that the Court was *not* construing the state constitution, but it was making a rule as to commercial securities which was directly opposed to the decisions of this Court and to the law merchant — a rule which we submit is not to be forced upon this Court under the thin disguise of being a state constitutional question, nor to escape general condemnation because of the trbunal which propounded it.

II.

*Second question.* — Whether the facts offered in evidence are "competent and sufficient" to establish the taxable valuation of the property in the city of Litchfield, in 1873?

The first fact offered in evidence is, that no assessment of the property of the *city* of Litchfield was made or authorized to be made in the year 1873.

(*Vide* Record, p. 7.)

The value of the taxable property of Litchfield has not been "ascertained" then as provided for in the 12th section of the 9th article of the state constitution.

(*Vide* Record, p. 8.)

This being so, the remaining evidence (Record, pp. 7, 8) shows that the assessed valuation of the towns of North and South Litchfield was ascertained by the assessors of those towns, and that other officers ascertained the value of the railroad property, and still others that of the school property in a part of the county in which Litchfield is situated, and that by compiling these different returns, the assessable valuation of the property in the city of Litchfield may be ascertained.

It is not in evidence that it was the duty of any city officer to so compile these various returns, or that any authorized person ever did so; but the Court is now asked to do so, and so far to constitute itself a city functionary as to make an estimate from these returns what the taxable value of the property in the city then was.

Briefly, the fact necessary to be proved to make out the defendant's case on this point is the *ascertained* taxable value of this property in 1873; and the evidence shows that it never was ascertained, but that it may be ascertained.

This can hardly be said to prove the necessary fact, but the contrary.

III.

*Third question.* — Whatever may be the opinion of the Court upon the last question, it is confidently submitted that the inadmissibility of this evidence as against this plaintiff, on the ground of estoppel *in pais*, is well settled.

*Township of Coloma* v. *Eaves*,
*Marcy* v. *Township of Oswego*,
*Humbolt* v. *Town of Long*,
(all before cited.)

These and many other decisions of this Court establish the rule, that when the proper officer of a municipality issues

its bonds, duly executed, his act estops the municipality from subsequently showing in defence to a suit by a bona fide holder, that anything, which, if done, would have made the bonds valid, was not done. Municipalities are not permitted to profit by the carelessness or dishonesty of their officers, and must honor the commercial paper which they have power to issue when it gets into innocent hands, even if it was issued erroneously or fraudulently, and their treasuries never received a dollar for it.

In this case there is no such hardship, and the defence relied on is dishonest as well as unavailing at law, for the water-works built with the money received for these bonds are in full operation, and their benefits are daily experienced by the community which seeks to repudiate the debt by setting up its own fraud in contracting it.

FRANK MORISON,
*of Counsel for Plaintiff in error.*

OFFICE SUPREME COURT U. S.
FILED
MAR 9 1880
D. W. MIDDLETON, Clerk

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1879.

ALEX. BUCHANAN,
*Plaintiff in Error.*
vs.
THE CITY OF LITCHFIELD, ILL.,
*Defendant in Error.*
No. 309.

From the Circuit Court of the United States,
Southern District of Illinois.

## BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

A. L. KNAPP,
ATTORNEY FOR DEFENDANT IN ERROR.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1880

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## BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

### BRIEF OF THE ARGUMENT.

We make the point that under the Constitution of Illinois, and the facts herein, the bonds, from which are the coupons in suit, are null and void.

Const. of Ill. 1870, Art. 9, Sec. 12.

Law vs. The People, ex rel., 87 Ill. 385.

Fuller vs. The City of Chicago, 89 Ill. 282.

### ARGUMENT.

The provision of the Constitution of the State of Illinois involved herein, is as follows:

"No county, city, town, township, school district, or other mu-
"nicipal corporation, shall be allowed to become indebted in any
"manner, or for any purpose, to an amount including existing in-
"debtedness in the aggregate exceeding five per centum on the
"taxable property therein, to be ascertained by the last assessment
"for State and county taxes previous to incurring such indebted-
"ness."

Art. 9, Sec. 12, Const. Ill. of 1870.

Rev. Stat. 1874, p. 75.

This provision, under the facts of the case, we claim invalidates the entire issue of the bonds of the city of Litchfield, known as the water bonds, and the coupons from which are the subject of this suit.

The bonds in question were authorized by an ordinance of the city council of said city, passed December 4th, 1873, and is set out in the printed record herein, page 6.

January 1st, 1874, in pursuance of said ordinance, the city, through its mayor and clerk, issued one hundred bonds of $500 each, or $50,000 in all, with interest at ten per cent. per annum.

At this date the debt of said city, exclusive of these bonds, was $70,000.

The total value of all the taxable property in said city, for the year 1873, as ascertained by the assessment for that year, for state and county purposes, was $1,400,000.

It thus appears without question, that on January 1st, 1874, when these bonds were issued, the debt of said city had reached the maximum sum allowed by the Constitution of the State; and these bonds, and each and every part thereof, were in excess of such constitutional limitation.

In answer to this, it is objected, 1st, that the constitutional provision is not self-executing; that it requires legislation to give it

efficiency—and 2d, that it is not shown by any competent testimony what the value of the taxable property in the city was for the year preceding the issuance of these bonds.

The first objection counsel for appellants answer themselves, on page 9 of their brief, where they concede that the Supreme Court of the State, in the case of Law vs. The People, 87 Ill. 385, hold this very provision to be self-executing; in that case, on page 392, the Court say:

"It has also been repeatedly held and is regarded as settled doc-
"trine, that all negative or prohibitory clauses of this character
"found in a Constitution, execute themselves, as legislative provis-
"ions, in the same or other language, prohibiting the incurring of
"such indebtedness, could be no more binding or forcible than the
"Constitution itself."

It is contended, however, that a difference exists between this case and the one in 87 Ill. *supra*, and counsel say that "for anything that appears in the case in 87 Ill., all the facts necessary to be known in order to determine the extent of the present authority of the city of Chicago to contract debts, were of record and accessible to persons interested."

This is said in view of the testimony offered, as showing the amount of taxable property in the city of Litchfield for the year 1873, as assessed for State and county purposes, and also the sum of the debt of said city of Litchfield.

A brief review of the facts will show no such difference can exist.

It will be borne in mind, that the sum of the taxable property in any municipalty, as affording the criterion by which it may incur any indebtedness under this constitutional provision, must be "the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness."—Const., Art. IX, sec. 12.

It will be conceded at once, that the assessment of all property in the State, whether in cities, towns, villages or country, for State and county taxes, must be and is, in every case made by the assessors, whose appointment is provided for, and whose duties are prescribed in the general revenue law of the State, with the single exception of the capital stock and franchises of corporations, and certain railroad property, and which last mentioned property is to be assessed by the State Board of Equalization.

The Township Organization law of Illinois, provides for the election of an assessor for each municipal town. Rev. Stat. 1874, page 1075, Art. 7, Sec. 61.

The duties of such assessor are then defined in the General Revenue Law, Rev. Stat. 1874, page 870, *et seq.*, and may be said, in a general way, to be, to ascertain the fair cash value of the taxable property in his town, and set the value of the same down in a book prepared for him by the county clerk.

The 81st section of said Revenue Law, page 871, then provides that, "It shall be the duty of the assessor when making assessments of personal property, to designate the number of school district or districts in which each person assessed is liable for tax; which designation shall be made by writing the number of the district opposite each assessment, in a column provided for that purpose in the assessment book."

It appears that the city of Litchfield is situated in two municipal towns, known as North and South Litchfield, and the assessors of each of the last named towns assess all the property in their several towns, and thus each assess a part of what is in the city of Litchfield, and the sum of which assessments thus made comprises the value of the taxable property of said city, the sum of the per-

sonalty being ascertained as provided by the aforesaid section 81 of the Revenue Law, cited *supra;* the said city being in its corporate limits a separate school district.

It will thus be seen that the amount of the taxable property in said city, can be and was ascertained as fully and exactly as the assessed value of property in the city of Chicago, or any other city in the State can be. Any one desirous of ascertaining the fact can do so by examining the public records of the assessment book of the property within the limits of this corporation, and in the case of the city of Chicago, he would have to resort to precisely the same class of books to obtain this information, and in the case of that city, he would be obliged to compile the assessments of several municipal towns, comprising the city of Chicago, to ascertain the total assessment for State and county taxes of property within that city.

Upon this point of assessment the Court, on page 397 of the case in 87 Ill., in speaking of the city of Chicago, say:

"It has the same revenue system as the State. Its taxes are "assessed, levied and collected in the same manner and at the same "time."

And it may further be said that this assessment of property in this city, thus made and thus ascertained, is the only mode provided by law for the assessment of the property in this city, or any and all others in the State, for State and county taxes, and that fact is so found, so far as this city is concerned, by the judges below, and set forth in their certificate on page eight of the printed record herein. That amount the judges in said certificate say, "that by compiling the assessments thus made, the exact amount of the value of the taxable property in said city of Litchfield for the year 1873, as assessed for State and county taxes, should be, and is,

ascertained to be the said sum of $1,400,000. And it was proven that the debt of the city of Litchfield, on and before the 1st day of January, 1874, exclusive of the water bonds, was $70,000.

Counsel, on page 10 of their argument, say, "that in this case there was no assessment of the property in the city of Litchfield for taxation for 1873, specifically," etc.

The answer to which is obvious; no law providing for any such specific assessment of property in said city would have been constitutional if any such had been enacted; the property in said city must be assessed by the local assessors of the town in which that city, or any other in the State, is situated, in order to be effective at all. On April 15, 1873, the Legislature passed an act for the levy and collection of taxes by the incorporated cities in the State, and which act is found in Rev. Statutes of 1874, page 254, *et seq.*, and which provided the machinery for a separate assessment and collection of taxes by such cities. This act was pronounced unconstitutional by the Supreme Court of the State in the case of People *ex rel.* vs. Cooper, 83 Ills. Rep., 585.

Upon the other point of the amount of the debt of said city, we need only say that it was shown by the testimony, and the competency of the testimony upon this point we do not understand to be questioned, to have been $70,000 when these bonds were issued.

This case, we submit, is therefore in all respects precisely similar to the one cited in 87 Ill. Rep., and we can see no reason why that case is not decisive of this, if the decision of our Supreme Court upon the effect of this constitutional provision is controlling.

On page 398 of the case above cited the Court say:

"These certificates, then, being evidences of indebtedness, and "the city, at the time and before they were issued, having reached "the limits of its power to incur debts, in any manner or for any

"purpose, they were not only unauthorized, but were prohibited "by both the constitution and the charter, and it follows the city "had no power to make any appropriation or levy a tax to pay "interest on them. The certificates having been issued and the "debt contracted in direct violation of law, they were void, and the "debt being void, the interest must be equally void, and the levy "of the tax to pay is as effectually prohibited as to incur or pay the "principal debt."

The principle involved in the above case came again before the Supreme Court in the case of Fuller vs. City of Chicago *et al.*, in 89 Ill., and on page 294 of that volume the Court say:

"We hold these instruments were issued in violation of the Con- "stitution and the provisions of the charter of the city, and that "both issues are void."

It is however, claimed that the questions of fact involved here, and being the amount of the assessment value of property in the city, and also the sum of its debt, is one of those questions which it is competent for the city authorities to decide, and they having decided that the facts existed which justified their issuing these bonds, such decision is final and controlling.

In support of this position counsel cite the case of Marcy vs. Township of Oswego, 92 U. S. 637, and Town of Coloma vs. Eaves *Ib.* 484.

Referring to the vast number of decisions by this Court upon this question of power by such corporations to issue such securities, we say, that it may be collected from all of them, that the general rule is concisely stated in the case above, of the Town of Coloma, wherein the Court say: "When legislative authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with

power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal."—Page 491, also Block vs. Commissioners, 99 U. S. 696.

Applying this rule to the case at bar, these bonds are invalid.

Since July 2, 1870, when this Constitution took effect, no municipality in the State could, for any purpose, become indebted beyond the limit fixed in that instrument (unless in case of subscription to railroads, when such subscriptions had before then been authorized). The prohibition was positive, fixed in a manner not liable to change, for it is contained in the organic law, and to no municipality nor to its officers, is given the power to decide the question whether the limit of lawful indebtedness had been reached; that is and must remain a fact, which every one dealing with the corporation and buying its securities, must inform themselves at the outset or take the consequences of their failure; the public records of any such municipality are always open for the inspection of every one desirous of informing himself of what they show, and no one need for a moment remain ignorant of what are the facts in a case of this kind, if he desires to ascertain them. No recital, in fact, of any kind, is contained in these bonds, bearing upon this question; they simply recite that the bonds are issued under authority of a certain Act of the General Assembly and in pursuance of an ordinance of the said city, passed in conformity with that Act.

That Act (Rev. Stat. 1874, p. 250), if examined by any one, would have satisfied him at once, that any city might erect water works upon any scale of magnitude it saw fit, and might borrow

money to erect the same, and levy taxes to pay therefor; but of course all these provisions are to be exercised in view of, and subordinate to all the constitutional limitations upon the power of any such municipality to incur indebtedness for any purpose.

If the limitation has been reached, the power is exhausted and no longer exists.

This Court in the case of the Township of East Oakland vs. Skinner, 94 U. S. 255, hold that a subscription to the stock of a railroad company and the bonds issued in payment therefor, were void, because of a prohibition of any such subscription in the Constitution of the State, and that case not being within the proviso to such prohibition. The same view is announced in the County of Randolph vs. Post, 93 U. S., p. 502. In this last case the Court say: "This provision took effect on the 2d of July, 1870. If, then, the County of Randolph had been authorized, prior to July 2, 1870, to make the subscription in qnestion, the bonds were valid, so far as this objection is concerned. If it was not so authorized, the subscription was prohibited by the Constitution, and the bonds were void."—Page 508.

Under the many decisions made by this Court upon the effect to be given to the decisions of the highest Court of a State, upon a question of construction of a statute or a constitution of such State, we do not see why the cases we have cited from the Illinois Reports are not of controlling force here, as they certainly are sound in principle, and give full effect to this salutary provision of the fundamental law of the State. In the recent case of Fairfield vs. The County of Gallatin, decided at the present term of this Court, reported in Cent. Law Journal of St. Louis, vol. 9, page 467, this Court changed a previous ruling upon another provision of the

same constitution, in order to harmonize their rulings with those of the Supreme Court of the State upon the same constitutional provision.

If it is now held by the Court, as claimed by counsel, that the determination of the right to issue such bonds, depending upon the fact whether the constitutional limitation has been reached, is one to be decided by the officers of the municipality, and their issuance of any such bonds is a determination by them of the question, and which is final, then the constitutional provision becomes of no effect, and the people are powerless to check or prevent the impositions of any burdens, which either incompetent or corrupt officials may see fit to impose upon them.

The salutary restraints, which the people in their collective capacity supposed they had thrown around the power to create municipal indebtedness, become utterly valueless, and of no more effect than bands of straw.

A. L. KNAPP,
*Att'y for Defendant in Error.*